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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Carl A. Reiser

Serial No.: 10/765,737

Filed: January 27, 2004

Title: Preventing Fuel Starvation of a
Fuel Cell Stack

Docket No.: C-3363

Art Unit: 1745

Examiner: O'Neill, Karie Amber

I hereby certify that this correspondence is being facsimile
transmitted to the United States Patent and Trademark
Office (Fax No. 571-273-8300) on July 23, 2007.

RESPONSE

Barbara Cecere

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

1. This paper is responsive to the Office Action dated June 1, 2007. Claims 1-5 remain for consideration.

2. The June 1, 2007 Office Action was made final. Because new claims 4 and 5 have been deemed to be a different invention from the invention described in claims previously examined, claims 4 and 5 were withdrawn without any action on the merits. However, applicant is absolutely entitled to reconsideration of the requirement for restriction under 37 CFR 1.143. Therefore, the subject action should not have been made final.

3. Claim 4 has been deemed to be directed to an invention independent or distinct from the invention already examined on the merits herein. In this case, even though claim 2 may perform the process of either claim 1 or claim 4, the processes of claim 1 and 4 are not "materially different". Applicant hereby expressly admits that the inventions in claim 4, claim 1 and claim 2 would have been obvious over each other within the meaning of 35 U.S.C. 103. Therefore "restriction should not be required". *In Re Lee*, 199 USPQ 108 (Comm'r Pat. 1978). (MPEP 803 II GUIDELINES).

4. Although the claims are not correctly quoted in this paragraph, it is understood that claim 4 is deemed to be a specie different from other species which have already been elected. However, MPEP 806.03 states "Where the claims of an application define the same essential characteristics of a single disclosed embodiment of an invention, restriction therebetween should never be required. This is because the claims are not directed to distinct